

A.G. Contract No. KR00-1249TRN
ADOT ECS File No. JPA 00-93
Project: State Route 51
Section: Union Hills to L101
TRACS No. H5385 01C

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF PHOENIX

93369

THIS AGREEMENT ("Agreement") is entered into 20 November, 2000 pursuant to Arizona Revised Statutes Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PHOENIX, ARIZONA (the "City").

I. DEFINITIONS

"Advanced Construction Schedule" means the construction of the Project to begin on or about November 2001 and that the Project be open to vehicular traffic on or before December 31, 2003, as set forth in Exhibit A, attached hereto and made a part hereof.

"Agreement" means this intergovernmental agreement for the Project, as the same may be amended or supplemented from time to time.

"Business Day" means any day on which City and State offices are open for business.

"City" means the City of Phoenix, Arizona.

"City Interest Rate" means the rate of interest equal to the HELP Loan Interest Rate less one-half of the Construction Discount Rate.

"City Interest Payment" means the payment by the City of a portion of the interest accrued on the outstanding principal balance of the HELP Loan calculated at the City Interest Rate as of the 15th day of each month, computed on the basis of a 360 day year comprised of twelve 30-day months.

"Construction Discount Rate" means 3.50%, which is the rate determined pursuant to the Life Cycle Program Certification as of January 2000.

NO 24327
Filed with the Secretary of State
Date Filed: 11/20/00

Betsy Bayless
Secretary of State

By Dick V. Haenewald

"Department" means the Arizona Department of Transportation.

"HELP" means the Highway Extension and Expansion Loan Program established by the State pursuant to Arizona Revised Statutes Title 28, Chapter 21, Article 5, as amended.

"HELP Loan" means an amount not to exceed:

- i. 38.7% of \$55,000,000 (with \$55,000,000 representing the total estimated cost of the freeway segment from Bell Road to Union Hills), or;
- ii. 38.7% of the successful low bid plus 14% for construction engineering and contingencies, whichever is less,

plus:

- i. 56.1% of \$2,000,000 (with \$2,000,000 representing the total estimated cost of the landscape construction from Union Hills Dr. to Loop 101), or;
- iii. 56.1% of the 38.7% of the successful low bid plus 14% for construction engineering and contingencies, whichever is less.

"HELP Loan Interest Rate" means the rate of interest on the HELP Loan equal to ninety percent (90%) of the yield of a municipal bond with a "Aa" rating as referenced in the Index and with a two year maturity, and which rate shall be fixed for the entire life of the HELP Loan. Such rate shall be determined fifteen (15) days prior to the first payment from the HELP Loan to the Project contractor.

"Index" means the Municipal Market Data General Obligation Yields Index published daily in *The Bond Buyer*.

"Life Cycle Program" means the Maricopa Association of Government's Area Life Cycle Construction Program in effect at the time of the applicable event or action or for the period indicated.

"Parties" means the State and the City collectively.

"Party" means the State or the City as the case may be.

"Project" means the construction of approximately 1.3 miles of roadway on State Route 51 (Squaw Peak Freeway) from Union Hills Drive to Loop 101 (Pima Freeway), including the construction of landscaping associated therewith, and other construction-related costs as necessary to complete the Project, excluding any additional features that may be requested by the City.

"Project Programmed Funds" means the funds approved by the Maricopa Association of Governments in the Life Cycle Program designated for use in paying the costs of the Project.

"RARF Fund" means the Maricopa Regional Area Road Fund created pursuant to the provisions of Title 28, Chapter 17, Article 1 of the Arizona Revised Statutes as amended.

"State" means the State of Arizona acting by and through the Department.

"State's Fiscal Year" means the fiscal year which begins on July 1st and ends on June 30th of the following year.

"State Standards" means, unless otherwise agreed to by the parties to this Agreement, Department guidelines, specifications, rules and regulations as of the date of this Agreement for the design and construction of ramps, highways, landscaping, fencing and enclosure structures, drainage and flow structures and other related highway structures.

"Transportation Board" means the Transportation Board of the State organized pursuant to Arizona Revised Statutes, Sections 28-301 and following.

II. RECITALS

1. The State is empowered by Arizona Revised Statutes, Sections 28-401 and 28-7677 to enter into this Agreement and has by resolution (attached hereto and made a part hereof) resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the State.
2. The City is authorized by Chapter II, Section 2(i) of the Phoenix City Charter to enter into this Agreement and has by ordinance (attached hereto and made a part hereof) authorized the undersigned to execute this Agreement on behalf of the City.
3. Under the current FY2000-2007 Life Cycle Program, the Project is scheduled to be completed in or about June 2005.
4. The City desires the construction of the Project to be completed such that it is open to vehicular traffic on or before December 31, 2003.
5. To advance the construction of the Project in accordance with the Advanced Construction Schedule, the City has agreed to pay a portion of the interest on the HELP Loan, subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the conditions expressed herein, it is agreed as follows:

III. SCOPE OF WORK

1. The State will:
 - a) Use its best efforts to complete the design of the Project in accordance with the Advanced Construction Schedule and provide the City with copies of the Project plans at 60% and 95% completion for review and comment.
 - b) Use its best efforts to provide to State Standards, the design plans, specifications and such other documents and services necessary for the advertising of the Project on or before June 30, 2001. Project features requested by the City in excess of State Standards will be added to the Project only upon the City's prior written agreement to pay any additional design and construction costs incurred by the State as a direct result of the City requested features and approval by the State.
 - c) Prior to advertising for bids, provide the City with a construction cost estimate for the Project based on 100% complete plans.
 - d) Use its best efforts to open bids for the roadway portion of the Project on or before August 31, 2001. Recommend to the Transportation Board that it award one or more construction contracts for the Project. Administer the construction of the Project and make all payments to the contractors.
 - e) If the then current Life Cycle Program revenues are higher or lower than expected, the repayment of the HELP Loan will be subject to acceleration or delay in the same manner as any other project, but the HELP Loan shall be repaid not later than December 31, 2007.
 - f) Use its best efforts to recommend award of the construction contract by the Transportation Board on or about September 2001 and use its best efforts to issue to

the contractor a notice of award within fifteen (15) business days of award of the construction contract by the State Transportation Board.

- g) Use its best efforts to cause the Project to be open to vehicular traffic on or before December 31, 2003.
- h) Use its best efforts to provide financing through the HELP Loan for the purpose of paying the construction costs of the Project, and draw down the HELP Loan on an as-needed basis to solely pay for actual incurred Project construction costs, including, but not limited to, contractor payments and direct construction-related costs of the State.
- i) Provide the City with a monthly report reflecting the draws against the HELP Loan and corresponding interest payments due on the HELP Loan.
- j) Issue an invoice to the City for the amount of the City Interest Payment on the 15th day of each month with such interest payment due to the State on the 15th day of the next succeeding month, as reflected in the invoice.
- k) Utilize Project Programmed Funds for the repayment of the HELP Loan pursuant to the Life Cycle Program in effect at the time the Project is awarded.
- l) Utilize RARF funds, or other lawfully available funds, to pay for interest on the HELP Loan in excess of the City Interest Payment.
- m) Assume all operation and maintenance of the Project upon completion except as may be agreed to under separate intergovernmental agreements for signal cross-street, bikepaths, and landscape maintenance areas.
- n) Except for the portion of interest on the HELP Loan paid by the City, be responsible for all other costs and expenses of the Project.
- o) Give notice to the City if the State unilaterally and without cause delays the Accelerated Construction Schedule by more than 120 days. If the City does not give its written consent to the delay within 60 days of receipt of the notice, or the State fails to perform its obligations hereunder, the City's future responsibility and obligation to pay interest on the HELP Loan shall be deemed satisfied.

2. The City will:

- a) Use its best efforts to review and provide comments on the Project plans at 60% and 95% completion within ten (10) business days of the City's receipt of the plans from the State.
- b) Have the right to reject the construction cost estimate if the estimate is in excess of \$21,000,000, based on 100% plans, and shall communicate such rejection in writing, within ten (10) business days of the City's receipt of such estimate. If the City rejects the construction cost estimate, the construction of the Project will be completed in accordance with the then current Life Cycle Program.
- c) Be responsible for City Interest Payments due to the State on the 15th day of each month until the HELP Loan is paid in full with Project Programmed Funds.

- d) Be responsible for all non-recoverable expenses of the State due to advancing the Project if:
- (i) the City rejects the final construction cost estimate; or
 - (ii) the City terminates this Agreement without cause prior to advertisement for bids.

V. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in force and effect until whichever of the following is the first to occur: (i) the repayment by the State of the principal amount of the HELP Loan from Project Programmed Funds; or (ii) ten (10) years from the effective date of this Agreement. Either party may terminate this Agreement at any time prior to the advertisement for bids for the Project, upon thirty (30) days written notice to the other party.
2. This Agreement shall become effective upon filing with the Secretary of State.
3. This Agreement may be amended only upon written consent by the appropriate authorities hereto.
4. This Agreement may be canceled in accordance with Arizona Revised Statutes, Section 38-511.
5. The provisions of Arizona Revised Statutes, Section 35-214 are applicable to this Agreement. The City shall have like rights regarding State and contractor records pertaining to this Agreement and the Project.
6. In the event of any controversy which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes, Section 12-1518.
7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person, sent by facsimile transmission or deposited in the United States mail, postage prepaid addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
Fax: (602) 712-7424

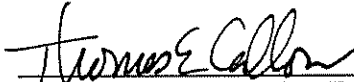
City of Phoenix
Street Transportation Director
200 West Washington Street, 5th Floor
Phoenix, AZ 85003-1611
Fax: (602) 495-2016

8. Notice shall be deemed received at the time it is actually received. Either party may change its mailing address, fax number or the person to receive notice by notifying the other party as provided in this Section.
9. This Agreement together with the exhibits attached represent the entire agreement between the parties and supercedes or replaces all prior letters, correspondence, communication, negotiations, agreements or proposed agreements written or oral. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the parties, and all amendments hereto must be in writing and signed by appropriate authorities hereto.

10. Attached hereto and incorporated herein is the written determination of each party's legal counsel pursuant to Arizona Revised Statutes, Section 11-952D that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.
11. Except as otherwise provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default, will not operate as a waiver of any default, or of such rights or remedies, or deprive any such party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.
12. For the purpose of any of the provisions of this Agreement, neither the State nor the City, as the case may be, shall be considered in breach of or in default of its obligations under this Agreement as a result of the enforced delay in performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to: acts of God, acts of the public enemy, acts of the Federal Government, fire, floods, epidemics, strikes, lock outs, freight embargoes and unusually severe weather; it being the purpose and intent of this provision that in the occurrence of any such enforced delay, the time for performance of the State's and the City's obligations, as the case may be, shall be extended for the period of the enforced delay, provided that the Party seeking the benefit of this provision shall have notified the other Party thereof in writing of the cause or causes thereof, and requested an extension for the period of the enforced delay. If notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after commencement of the cause, the period of delay shall be deemed to commence thirty (30) days prior to the giving of such notice.
13. The City's obligations hereunder do not and shall not constitute an indebtedness or pledge of the general credit of the City within the meaning of any constitutional, charter or statutory provision relating to the incurring of indebtedness, nor a pledge of the full faith and credit of the City. The City's obligations hereunder are enforceable exclusively from taxes, fees, charges, and other monies collected by the State and returned to the City for street and highway purposes pursuant to Title 28, Chapter 8, Article 2 of the Arizona Revised Statutes and are subordinate to any bonds issued under Title 48, Chapter 4, Article 5 of the Arizona Revised Statutes. The State shall not have the right to compel the exercise of any taxing power of the City to pay any amounts owed hereunder. Notwithstanding the foregoing, the City may, but shall not be required, to use any other lawfully available funds to satisfy its obligations.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY OF PHOENIX, a Municipal
Corporation, Frank Fairbanks, City
Manager

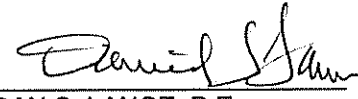

THOMAS E. CALLOW, P.E.
Director
Street Transportation Department

Date 11/9/00


ATTEST:

By 
City Clerk

STATE OF ARIZONA
Department of Transportation


DAN S. LANCE, P.E.
Deputy State Engineer

Date 11/6/2000


CITY CLERK DEPT.
2000 NOV 14 PM 3:58



CITY CLERK DEPT.
2000 NOV 14 PM 11:29

EXHIBIT "A"

SCHEDULE OF MAJOR EVENTS

<u>Event</u>	<u>Date</u>
IGA Approval	November 17, 2000
Design Completed	June 2001
Project Advertised	June 30, 2001
Project Bid	August 31, 2001
Project Award	September 2001
Construction Start	November 2001
Project Open To Traffic	December 31, 2003

APPROVAL OF THE CITY OF PHOENIX ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF PHOENIX and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 14th day of November, 2000

William D. Bock

ACTING City Attorney
DLB



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ 85007-2926

JANET NAPOLITANO
ATTORNEY GENERAL

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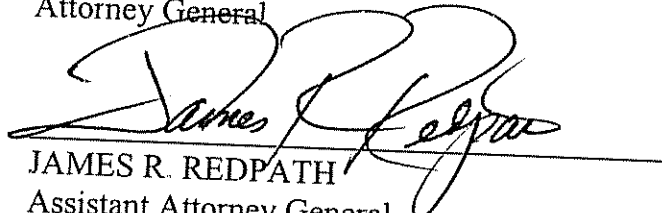
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR00-1249TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED January 11, 2001.

JANET NAPOLITANO
Attorney General


JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/663694

Enc.